

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 686 OF 2017
WITH
CIVIL APPLICATION No. 896 OF 2017 IN A.O. No. 686 OF 2017

M/s. Royal India Builders & Developers,
A partnership firm & Anr. ... Appellants/Applicants
Vs.

Ravindra Zipar Bhandari @ Ravindra
Janardhan Bhandari & Ors. ... Respondents

Mr. Vishal Kanade i/b. M/s. Pramodkumar & Co., Advocate for the
appellants/applicants.

Mr. S.S. Kulkarni, Advocate for respondent nos. 1 to 4.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 6th November, 2017.

P.C.:

Admit. By consent, the Appeal is heard finally and decided at
the stage of admission.

2. This Appeal from Order is directed against the order dated 18th
August, 2017 passed by the learned Judge of the City Civil Court,
Dindoshi, Mumbai in Notice of Motion No. 2583 of 2016 in S.C. Suit
No. 2289 of 2016 thereby allowing the Notice of Motion in terms of
prayer clause (a), which states that no third party interest is to be
created by the defendants and not to change the nature of the suit
properties.

3. The suit property is a land which originally belonged to one Govind Bhandari. After his demise, it came to the share of Motiram Bhandari, who is the father of defendant nos. 1 to 9 and mother of plaintiffs. Neerabai, the mother of the plaintiff nos, 1, 3 & 4 died on 2nd September, 2008 leaving behind her three children and husband, i.e., 4 plaintiffs. Motiram, father of Neerabai and defendant nos. 1 to 9, died on 31st December, 2010. Prior to his death, he has entered into Development Agreement on 12th September, 2007 in respect of suit land with defendant nos. 10 to 12, i.e., prior to the death of Neerabai. Defendant nos. 1 to 6 have entered into a registered Deed of Conveyance on 14th May, 2013 along with defendant nos. 11 and 12 in respect of suit land. Some of the defendants have also executed Power of Attorneys for execution of this Deed of Conveyance. The plaintiffs/husband and children of deceased Neerabai filed Civil Suit, as they were not party to the registered Deed of Conveyance and they did not give Power of Attorney to others who entered into Deed of Conveyance with defendant nos. 11 and 12 for declaration and injunction in respect of Deed of Conveyance and further transactions. The trial Court granted relief in terms of prayer clause (a). Hence, this Appeal.

4. The learned counsel for the appellants has submitted that the order passed by the trial Court is without any reasoning on the point of making out *prima facie* case. He submitted that Neerabai gave up her right in the suit property by written declaration dated 31st August, 2007, i.e., prior to death of Motiram along with other sisters. During the life time of Motiram, the plaintiffs did not claim any right in the suit property through Neerabai. The learned counsel has further submitted that the Deed of Conveyance between the appellants and defendant nos. 1 to 6 is registered. He further submitted that in the plaint, the plaintiffs have not challenged the main transaction, i.e., Development Agreement dated 12th September, 2007 which was executed by Motiram in favour of the appellants. The learned counsel submitted that without giving challenge to the said original Development Agreement, the plaintiffs cannot seek any other relief in respect of Deed of Conveyance which has taken place in one and same course of transaction.

5. The learned counsel appearing for respondent nos. 1 to 4/original plaintiffs has submitted that after the death of Motiram, the plaintiffs, being the legal heirs of Neerabai, made an application for mutating their names in the revenue record of the suit property.

However, their application was rejected by the Tahsildar and therefore, they challenged this order before the SDO. He submitted that in between, defendant nos. 1 to 6 have made an application for mutation of their names in the suit property before the Tahsildar which was allowed and therefore, that order is also challenged by the plaintiffs before SDO. The learned counsel further submitted that on the basis of registered Deed of Conveyance dated 14th May, 2013, the names of appellants are mutated by the Tahsildar, that is also challenged before the SDO. He submitted that SDO has taken a view that it is not a proper forum to decide the issue of declaration and other rights but this issue is to be adjudicated and decided by the Civil Court. Therefore, the plaintiffs have filed the suit before the Civil Court. It is further submitted that the written declaration by Neerabai and other sisters and the Deed of Conveyance was not within the knowledge of the plaintiffs earlier, however, in the proceedings before the Revenue Authority, the fact of alleged giving up the rights, declaration in the suit property and conveyance was known to the plaintiffs for the first time. The learned counsel has submitted that the right should have been given up by Neerabai by the registered documents. The learned counsel submitted that the plaintiffs are not in possession of the development agreement which has been

entered into by Motiram with the appellants and that document is not produced before the trial Court. The learned counsel submitted that the appellants have signed as vendor and vendee both as Power of Attorney Holder of defendant nos. 1 to 6. He supported the order passed by the learned Judge of the trial Court.

6. Heard the submissions. Perused the impugned order and the declaration of Neerabai dated 31st August, 2007. Admittedly it is an ancestral property. There is unregistered declaration by Neerabai for relinquishment of any right in the immovable property. In law, the document should be registered. The plaintiffs are the legal heirs of Neerabai who was having right in the suit property, whether that right continued is a matter of proof which can be tested at the time of trial on the basis of evidence of both the parties. Whether the declaration made by Neerabai stands as true and admissible in the Court of law is one of the decisive factors in this matter. However, as on today, it appears *prima facie* that the plaintiffs have made out a case. Though the original Agreement of Development is not challenged by the plaintiffs, the suit challenging the subsequent agreements can lie to the extent of further transaction. Hence, the order passed by the learned trial Judge is hereby maintained.

7. The learned counsel for the appellant submitted that the suit be expedited.

8. The appellants may move an application before the trial Court accordingly.

9. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)